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10 **UNITED STATES DISTRICT COURT**
11 **NORTHERN DISTRICT OF CALIFORNIA**
12 **OAKLAND DIVISION**
13

14 ZOMM, LLC,

15 Plaintiff,

16 v.

17 APPLE INC.,

18 Defendant.

Case No. 4:18-cv-04969-HSG

**DEFENDANT APPLE INC.'S
OBJECTIONS TO PLAINTIFF
ZOMM, LLC'S STATUS REPORT
REGARDING IPR PETITIONS**

Judge: Haywood S. Gilliam, Jr.

1 Defendant Apple Inc. objects to Plaintiff Zomm, LLC's Status Report Regarding Apple's
2 IPR Petitions (ECF 78) ("Zomm's Filing"). Although styled as a factual "Report," it is in essence
3 a non-noticed motion for reconsideration of Apple's fully briefed and granted motion to stay in
4 view of Apple's initial IPR petitions (ECF 75). *See, e.g.*, ECF 78 at 3 ("Zomm requests that the
5 Court lift the stay and let the district court case and the IPRs proceed concurrently."). Because
6 Zomm failed to seek or obtain leave to file a motion for reconsideration, as required by Civil L.R.
7 7-9, the Court should not consider Zomm's Filing.

8 In addition to being procedurally improper, Zomm's Filing is substantively without merit.
9 First, Zomm materially misrepresents the facts. Zomm claims that "Apple neglected to diligently
10 find and use" the Tran prior art patent. ECF 78 at 2. That is wrong. As set forth in a sworn
11 declaration filed with Apple's Tran IPR petition, Apple diligently searched for prior art internally
12 and in publicly-available databases before filing its initial IPR petitions in November 2018, and
13 none of the search results included Tran. In February 2019, while reviewing licenses for its Patent
14 L.R. 3-4 production, Apple found the Tran patent and determined it is relevant prior art. Apple
15 then worked diligently to prepare and file a petition based on Tran.

16 Zomm also accuses Apple of "fail[ing] to inform the Court and Zomm" of Tran at the
17 Court's March 21, 2019 hearing on Apple's motion to stay. *Id.* That is misleading at best. Apple
18 "informed" Zomm of the Tran reference in its February 25, 2019 Invalidity Contentions. And at
19 the hearing, Apple addressed the issue before the Court—whether the Court should stay the
20 litigation based on the IPR petitions filed in November 2018, neither of which rely on Tran.
21 Moreover, at the time of the hearing, Apple had not completed its analysis to determine whether it
22 would, in fact, file a petition based on the Tran prior art. Apple diligently completed its analysis
23 and filed that petition on April 30, 2019. Zomm's accusations that Apple is gaming the litigation
24 and withholding information from the Court are reckless and contrary to the facts.

25 Second, Zomm's Filing is premature. Zomm argues the Court should not extend the stay
26 "pending the resolution of all three IPRs." ECF 78 at 2. But Apple has not requested that the
27 Court stay the case pending resolution of the Tran IPR. If and when the Tran IPR is instituted, the
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1 parties and, if appropriate, the Court can determine what implications, if any, that has on the
2 status of the case.

3 The Court should strike or disregard Zomm's improper filing.

4
5 Dated: May 23, 2019

O'MELVENY & MYERS LLP

/s/ Luann L. Simmons

Luann L. Simmons

O'MELVENY & MYERS LLP

Attorneys for Defendant Apple Inc.